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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,091	09/30/2003	Jean Beaupre	END5101.0515146	4756
26874	7590	11/19/2007		
FROST BROWN TODD, LLC 2200 PNC CENTER 201 E. FIFTH STREET CINCINNATI, OH 45202			EXAMINER RYCKMAN, MELISSA K	
			ART UNIT 3773	PAPER NUMBER
			NOTIFICATION DATE 11/19/2007	DELIVERY MODE ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

dbell@fbtlaw.com
rgaunce@fbtlaw.com

Office Action Summary

Application No.

10/675,091

Applicant(s)

BEAUPRE, JEAN

Examiner

Melissa Ryckman

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3773

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on received on 7/24/07.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1, 14, 15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1, 14, 15 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 7/24/07 has been entered.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1,14,15 and 17-20 are rejected under 35 U.S.C. 102(b) as being anticipated by Hauenstein et al. (U.S. Patent No. 5,618,301).

Hauenstein teaches an anastomosis device, comprising:

- ☐ a first plurality of arcuate members (2,6) arranged in a first position in a cylindrical crown shape with each arcuate member having a pair of legs with an arcuate bend there between and with each leg overlapping at least one leg of an adjacent arcuate member (overlap near 8, Fig. 1a);

- a second plurality of arcuate members (portion opposite of 6 and 2 in Fig. 1a) arranged in a first position in an inverted cylindrical crown shape with each arcuate member having a pair of legs with an arcuate bend therebetween, and with each leg overlapping at least one adjacent arcuate member of the second plurality;
- a plurality of coupling members (8) joining an end of each leg of the first plurality of arcuate members with a respective end of a corresponding leg of the second plurality of arcuate members (at the center of apparatus 1 the top portion wires meet the bottom portion wires), wherein the joining by the coupling members brings at least a portion of the end of each leg of the first plurality of arcuate members into direct contact with least a portion of the respective end of a corresponding leg of the second plurality of arcuate members;
- wherein, when the connected first and second plurality of arcuate members are in a first position, the anastomosis device forms a woven hollow tube (Fig. 1a) with the first and second plurality of arcuate members extending proximally and distally in a slidably woven sinusoid with the arcuate bends of the first plurality of arcuate members at a distal end of the anastomosis device and the arcuate bends of the second plurality of arcuate members at a proximal end of the anastomosis device, the woven hollow tube formed by the anastomosis device defining a

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longitudinal axis and the coupling members (8) defining a circle of discrete couplings about a midpoint of the longitudinal axis (Fig. 1a);

- wherein the woven hollow tube formed by the anastomosis device is operably configured (the device is operably configured to transform as described) to transform into a second position forming a substantially flattened hollow rivet shape with each arcuate member of the first plurality of arcuate members being outwardly deflected from the longitudinal axis toward apposing arcuate members of the second plurality of arcuate members, wherein the first and second plurality of arcuate members are deflectable from the longitudinal axis by pivoting each of the joined first and second plurality of arcuate members about their respective coupling member to bring the first plurality of arcuate members into circular juxtaposition with the second plurality of arcuate members.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 14, 15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Hauenstein et al. (U.S. Patent No. 5,618,301).

Claims 14, 15 and 17-20 are being treated as a product by process claims, in that the claim refer to the process of making the device and not to the final product created. As set forth in the MPEP 2113, "Even though product-by-process claims are limited by and defined by the process, determination of patentability is based on the product itself. The patentability of a product does not depend on its method of production. If the product in the product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable even though the prior art was made by a different process." *In re Thorpe*, 777 F.2d 695,698,227 USPQ 964,966 (Fed. Cir. 1985) ; (citations omitted) (See MPEP 2113). Examiner will thus evaluate the product claims without giving much weight to the method of its manufacture.

Thus, in this case, claims 14, 15, and 17-20 include limitations directed to the method of making the device and not the final product made. It appears Hauenstein would be the same and would perform equally well as that claimed; especially since both applicant's product and the prior art have the same final shape and structure and perform the same function of an anastomosis device.

Response to Arguments

Applicant's arguments with respect to all the claims have been considered but are moot in view of the new ground(s) of rejection.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Melissa Ryckman whose telephone number is (571)-272-9969. The examiner can normally be reached on Monday thru Friday 7:30-4:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jackie Ho can be reached on (571)-272-4696. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

MKR



MICHAEL J. HAYES
SUPERVISORY PATENT EXAMINER